

Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

Employer Identification Number:

Date:

MAR 21 1997

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action. ✓

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

*C. Ashley Bullard*

C. Ashley Bullard  
District Director

[REDACTED]

Enclosures 3

[REDACTED]



ENCLOSURE 1

[REDACTED]  
[REDACTED]

[REDACTED] was incorporated in [REDACTED]  
[REDACTED] on [REDACTED].

Your Articles of Incorporation state that you are organized for public and charitable purposes. The specific purposes stated in your Articles of Incorporation are:

*To promote education, render assistance build, operate, manage, startup, maintain homes, group homes, small family homes, foster homes and any other form of housing, structures, facilities, and erect maintain and support ministries, or other entities dedicated to provide care, supervision, nurture, support, educate, give guidance and hope to infants, toddlers, adolescents, or any other population at risk through community service programs, or otherwise.*

To date, the only operational activities taking place are [REDACTED] care of three children, two of whom are in guardianship and one who is being adopted.

The governing body of your corporation consists of:

[REDACTED], Chairman of the Board/CEO and Founder

[REDACTED], Vice President

[REDACTED], Secretary/Treasurer

Your Articles of Incorporation provide that your corporation shall have members, and such membership will be as provided for in the by-laws.

Your by-laws provide that there shall be one class of membership with equal rights to all members.

Your application states that the only income your organization will receive will be corporate, private or governmental grants, and from fund raising efforts. You also plan to charge your members an annual fee of \$[REDACTED] each year to pay for administrative costs and expenses.

The financial data in your application indicates that you expect a total of \$[REDACTED] in gifts, grants and contributions, and \$[REDACTED] in membership fees, during your fiscal year ending [REDACTED], for a total of \$[REDACTED]. On the projected budget provided for your fiscal year ending [REDACTED], you anticipate \$[REDACTED] in gifts, grants and contributions, and \$[REDACTED] in membership fees, for a total of \$[REDACTED].

ENCLOSURE 1 CONTINUED

[REDACTED]  
[REDACTED]

The expenses of your organization for your fiscal year to end on [REDACTED], total \$[REDACTED]. Of this, a disbursement of \$[REDACTED] will be divided and distributed in equal amounts to your members, \$[REDACTED] is for occupancy expenses, and \$[REDACTED] in incorporation expenses. Of the \$[REDACTED] in expenses on the projected budget for your fiscal year ending [REDACTED], you indicate that \$[REDACTED] will be divided and equally disbursed among your members, and \$[REDACTED] are occupancy expenses.

Other than providing for the occupancy and incorporation expenses you indicated, all revenue received each year by your corporation will be divided and disbursed in equal shares among your members.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(a)-1(c) of the Regulations defines private shareholders or individuals as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

The attachments to page 2 of your application detail extensive activities plans, however, these activities will not be directly provided by your organization. Access to these activities and services will be provided through the utilization of existing community resources provided by other public and private agencies in your area. Examples cited in your application of such agencies include the [REDACTED] public parks and libraries, recreational centers, and [REDACTED] such as [REDACTED] and [REDACTED], among many others.

[REDACTED]



ENCLOSURE 1 CONTINUED

[REDACTED]

Your application indicates that members of your corporation must be committed qualified foster parents. Each member will pay a flat \$ [REDACTED] annual fee to join and remain a member. You further state in your application that members "will receive financial assistance to subsidize income for foster care; do-it-yourself legal assistance and community resource planned activities."

The attachment to your financial data entitled "[REDACTED] Proposed Disbursements to or for the Benefit of Members Schedule" states "upon receipt of gifts, grants or contributions, as proposed, the same will be distributed on equal share to all active members."

Your corporation's Chairman of the Board/CEO and Founder, [REDACTED], will also be a member of the corporation, and will share in such distribution of any gifts, grants and contributions received.

Revenue Ruling 57-449, 1957-2, C.B. 622, states that a trust set up to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals.

Revenue Ruling 67-367, 1967-2, C.B. 188, holds that a nonprofit organization whose sole activity is the operation of a "scholarship" plan for making payments to pre-selected individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

While your organization is not providing scholarships, your planned method of operation is analogous to that of the organization described in Revenue Ruling 67-367. Your purpose is to raise funds for equal distribution to your membership. Again, your corporations founder is also a member who will benefit from such distribution.

This distribution of corporate assets to the benefit of your members is a disqualifying factor for exemption under section 501(c)(3). Refer again to Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations which states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

ENCLOSURE 1 CONTINUED

[REDACTED]  
[REDACTED]

Based on the facts presented in your application and correspondence, as well as the precedent cited above, [REDACTED], fails to qualify for exemption under section 501(c)(3) because it will be operated to further the private interests of its members, rather than public purposes. This is evidenced by the fact that all the services and activities listed in your application will be provided by community resources already available, and that your distribution of assets to members is to supplement governmental funds already allocated to provide for the needs of children in the homes of your members.

Furthermore, the children in the care of your founder, [REDACTED], are her guardians and she has plans to legally adopt one of these children. Such distribution of assets to [REDACTED] constitutes inurement of corporate funds for the personal use of an insider.

In order to be charitable within the meaning of section 501(c)(3), an organization must be both organized and operated in such a manner as to serve public, rather than private, interests. Your corporation is organized and operated to serve the interests of your members, rather than public interests.

Accordingly, it is held that you do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code of 1986.

[REDACTED]